

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

JAMES GIULIANI and ANGELA
GIULIANI,

Plaintiffs,

v.

SEND ENTERPRISES, LLC, DRIVE
DEVELOPMENT, LLC and NICOLE
PEARL,

Defendant.

_____ /

COMPLAINT

Plaintiffs James Giuliani and Angela Giuliani (“Plaintiffs”), by and through undersigned counsel, hereby sue Send Enterprises, LLC (“Send Enterprises”), Drive Development, LLC (“Drive Development”) and Nicole Pearl (“Pearl”) (collectively, “Defendants”), and state:

PARTIES, JURISDICTION AND VENUE

1. This is an action where the amount in controversy exceeds Seventy-Five Thousand and 00/100 Dollars (\$75,000.00), exclusive of interest, attorneys’ fees and costs.
2. Plaintiffs James Giuliani and Angela Giuliani are individuals *sui generis*, who are citizens of the State of Texas.
3. Defendant Send Enterprises, LLC is a Delaware limited liability company with its principal place of business in Florida. Upon information and belief, Douglas Cox (an individual) is the sole member of Send Enterprises and is a citizen of the State of Florida for diversity jurisdiction purposes. No members of Send Enterprises are citizens of the State of Texas.

4. Defendant Drive Development, LLC is a Florida limited liability company with its principal place of business in Florida. Upon information and believe, Douglas Cox (an individual) is the sole member of Drive Development and is a citizen of the State of Florida for diversity jurisdiction purposes. No members of Drive Development are citizens of the State of Texas.

5. Defendant Nicole Pearl is an individual *sui generis* who is a citizen of the State of Florida. Ms. Pearl is currently a member in good standing with the Florida Bar. Nicole Pearl is also Mr. Cox's business partner, and the mother of their three children.

6. Jurisdiction is proper before this Court pursuant to 18 U.S.C. § 1332 as complete diversity exists between Plaintiffs and Defendants, and the amount in controversy exceeds \$75,000. None of the Defendants are citizens of the State of Texas.

7. Venue is proper before this Court because, among other things, (1) the contract at issue between Plaintiffs and Send Enterprises involved property located in Miami-Dade County, Florida; (2) the deposit at issue was to be held by the Escrow Agent located in Florida; and (3) the events giving rise to this cause of action accrued in Miami-Dade County, Florida.

GENERAL ALLEGATIONS

8. On or about August 14, 2021, Plaintiffs and Send Enterprises entered into a Purchase Agreement (the "Purchase Agreement") with respect to the sale of 3165 Gifford Lane Miami, Florida 33133 (the "Property").

9. In connection with the Purchase Agreement, Plaintiffs paid an initial deposit of \$487,500 (the "Deposit").

10. The deposit was to be held in escrow by the Escrow Agent, which was defined to be Drive Development and Nicole Pearl (collectively, "Escrow Agent").

11. On or about January 26, 2023, Plaintiffs and Send Enterprises entered into a Release and Cancellation of Contract and Addendum to Release (the "Cancellation Contract"), a true copy of which is attached.

12. The Cancellation Contract was directly negotiated between Plaintiff James Giuliani and Defendant Nicole Pearl.

13. Pursuant to the Cancellation Contract, the original Purchase Agreement was cancelled, and can no longer be enforced by the Defendants.

14. The Cancellation Contract further provides for the return of the Deposit as follows:

With the exception of the deposit of \$487,500.00, upon signing this Release, James and Angela Giuliani/Buyer relinquish(es) all rights to 3165 Gifford Lane, Miami, FL 33133 ("3165 Gifford"). Upon signing this Release, the Seller also releases James and Angela Giuliani/Buyer from any and all obligations related to 3165 Gifford. Moreover, in conjunction with the Release, it is acknowledged that James and Angela Giuliani/Buyer collectively have a deposit of \$487,500.00 with the Seller, which the Seller or escrow agent will return to James and Angela Giuliani/Buyer by March 31st, 2023*. Upon signing this Release and successful return of the \$487,500.00 deposit from Seller or escrow agent to James and Angela Giuliani/Buyer, neither party (including all employees, officers, representatives, Developer's Lender as defined in the Purchase Agreement, partners, members, designees and/or affiliates thereto) will have a valid legal claim against the other.

*** Seller shall return the deposit to Buyer by March 31st, 2023, however, Seller shall use best efforts to facilitate a sooner return of Buyer's deposit.**

Cancellation Contract, Addendum to Release (bold in original) (emphasis added).

15. Send Enterprises and/or the Escrow Agent were required to return the Deposit to Plaintiffs by March 31, 2023. Defendants failed to return the Deposit.

16. All conditions precedent to the prosecution of this action have been performed, satisfied, excused or waived.

17. Plaintiffs have been required to retain the services of the undersigned counsel to prosecute this action and are obligated to pay counsel an hourly fee for their services.

COUNT I – BREACH OF CONTRACT
(against Send Enterprises)

18. Plaintiffs incorporates Paragraphs 1 through ___ above as if fully set forth herein.

19. Under the Cancellation Contract, Send Enterprises was to ensure the return of the Deposit to Plaintiffs by March 31, 2023.

20. Send Enterprises breached the Cancellation Contract by failing to return the Deposit to Plaintiffs.

21. Send Enterprises' breach of the Cancellation Contract has caused and continues to cause damages to Plaintiffs.

WHEREFORE, Plaintiffs James Giuliani and Angela Giuliani demand judgment in their favor and against Defendant Send Enterprises, LLC, together with pre- and post-judgment interest, attorneys' fees and costs allowable under Florida law, and for such other and further relief as this Court deems just and proper.

COUNT II – BREACH OF FIDUCIARY DUTY
(against Nicole Pearl and Drive Development)

22. Plaintiffs incorporates Paragraphs 1 through ___ above as if fully set forth herein.

23. Defendants Nicole Pearl and Drive Development collectively served as the Escrow Agent with respect to the Deposit.

24. The Escrow Agent had fiduciary duties to the Plaintiffs, including a duty to handle the transaction in an honest and impartial manner, and a duty to safeguard and account for the Deposit to be held in escrow.

25. Under the Cancellation Contract, the Escrow Agent was directed and instructed to disburse the Deposit to Plaintiffs by March 31, 2023.

26. Defendants Nicole Pearl and Drive Development, LLC, as the Escrow Agent, breached their fiduciary duties to Plaintiffs.

27. Among other things, the Escrow Agent has not handled the transaction in an impartial manner, has not safeguarded and accounted for the Deposit, and has not disbursed the Deposit to the Plaintiffs.

28. As a result of Defendants Nicole Pearl and Drive Development, LLC's breach of their fiduciary duties to Plaintiffs, Plaintiffs have been and continue to be damaged.

WHEREFORE, Plaintiffs James Giuliani and Angela Giuliani demand judgment in their favor and against Defendants Nicole Pearl and Drive Development, LLC, together with pre- and post-judgment interest, attorneys' fees and costs allowable under Florida law, and for such other and further relief as this Court deems just and proper.

Dated: April 13, 2023.

Respectfully submitted,

/s/ Brian H. Koch

BRIAN H. KOCH

Fla. Bar No. 637335

brian.koch@hkllaw.com

HOLLAND & KNIGHT LLP

515 East Las Olas Boulevard, Suite 1200

Fort Lauderdale, Florida 33301

Tel: 954.525.1000

Fax: 954.463.2030

Counsel for James and Angela Giuliani